

# Portable Audio/Video Recorders

## 425.1 PURPOSE AND SCOPE

The Hayward Police Department requires that each officer use either a department-issued digital audio recorder (DAR) or body worn camera (BWC) during the course of their official police duties. These recorders are intended to assist officers in the performance of their duties by providing an unbiased audio and/or video record of a contact.

### 425.1.1 ACCREDITATION STANDARDS

This section pertains to the following CALEA Standards: 17.5.4, 41.3.8

## 425.2 DEFINITIONS

**Digital Audio Recorder (DAR)** – A device individually worn by officers that can capture audio when activated by the officer.

**Body Worn Camera (BWC)** – A device individually worn by officers that can capture audio and video when activated by the officer.

**Digital Evidence Management System (DEMS)** – A management system designed to digitally collect, store, secure, disseminate and purge recorded media. The digital recordings are accessible to authorized personnel and maintain an audit trail of user activity.

## 425.3 POLICY

Officers shall only use a department-issued DAR or BWC. All video and/or audio recordings created while on duty, to include photos of crime scenes, traffic accidents, arrests, subject stops, traffic stops, prisoner and witness interviews, evidence, and any other daily activity are the property of the Hayward Police Department. Officers shall not mix work related recordings with their personal information or personal recordings. Additionally, officers shall not use department-issued video or audio recording devices and recording media for personal use.

Officers shall utilize their DAR and BWC in accordance with the provisions of this policy in order to ensure the proper and most effective use of both devices.

Except for official law enforcement related purposes, duplication or dissemination of any recording outside the Hayward Police Department is strictly prohibited without specific written authorization of the Chief of Police or his/her designee.

## 425.4 OFFICER RESPONSIBILITIES

Prior to going into service, each uniformed officer will be responsible for making sure that he/she is equipped with a department-issued DAR or BWC in good working order. The device shall be sufficiently charged and tested for proper function. Officers shall report malfunctions, damage, loss or theft of their recording devices to their supervisor prior to going into service.

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In regards to BWCs, uniformed officers shall wear the recorder on their person in a secured fashion and in such a way to provide an unobstructed camera view of officer/citizen contacts. Officers shall use an approved mount to secure the BWC to their uniform.

By the conclusion of the officer's shift, the officer shall upload the BWC recording(s) to the DEMS to include the appropriate category. Officers shall follow upload procedures pursuant to this policy. In the same manner, at the conclusion of the officer's shift, DAR recordings shall be uploaded into the PUMA Management System.

Officers shall document the use of DARs or BWCs in any associated report for evidentiary purposes. In the event an officer fails to record an incident as required by this policy or the recording device malfunctions, the officer shall document the reason(s) in their associated report and on the appropriate form for record keeping. He/she shall submit the form to his/her supervisor as soon as practical.

#### **425.4.1 NON-UNIFORMED RESPONSIBILITY**

Any officer assigned to non-uniformed positions may carry a department-issued DAR or BWC at any time the officer believes that such a device may be beneficial to the situation. When a non-uniformed officer works a uniformed shift, he/she shall wear and use a Department-issued DAR or BWC in accordance with this policy.

#### **425.4.2 TRAINING**

Officers must complete an agency-approved training to ensure proper use and operations. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance and to incorporate changes, updates or other revisions in policy or equipment.

### **425.5 SUPERVISOR RESPONSIBILITIES**

Supervisors shall ensure proper performance pursuant to this policy regarding DARs and BWCs. Supervisors shall ensure that officers properly document the activation of their DAR or BWC in the associated report. In cases where the officer's DAR or BWC was not activated pursuant to this policy, the supervisor is expected to ensure proper documentation by the officer of the incident on the appropriate form and submit the form to the IA manager.

When improper use of the DAR or BWC becomes apparent, supervisors shall document the officer's policy violation accordingly based on the Standards of Conduct and Evaluation of Employees policies.

Supervisors shall work to promptly address any technical issues as soon as practical that may arise with the recording devices. DARs or BWCs that are malfunctioned, damaged, lost or stolen shall be replaced prior to the officer going into services or as soon as practicable.

#### **425.5.1 SUPERVISOR RESPONSIBILITIES**

Supervisors should take custody of a portable audio/video recording device as soon as practicable when the device may have captured an incident involving the use of force, an officer-involved

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shooting or death or other serious incident, and ensure the data is downloaded (Penal Code § 832.18).

### **425.6 OPERATING PARAMETERS**

Penal Code § 632 prohibits any individual from surreptitiously recording any conversation in which any party to the conversation has a reasonable belief that the conversation was private or confidential, however Penal Code § 633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation, as follows:

- (a) No member of this Department may surreptitiously record a conversation or video footage of any other member of this department without the expressed knowledge and consent of all parties. Nothing in this section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code § 3303(g).
- (b) Officers may surreptitiously record any conversation with or video footage of an individual, including another member of this department, during the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation.
  - 1. For the purpose of this policy, any officer contacting an individual suspected of violating any law or during the course of any official law enforcement related activity shall be presumed to be engaged in a criminal investigation. This presumption shall not apply to contacts with members of this Department conducted solely for administrative purposes.

Officers that are present during a YFSB counseling session shall not record any portion of that session without the knowledge of the counselor and prior approval from a YFSB supervisor or sworn supervisor.

All on-scene officers (inclusive of initiating and witness officers) shall activate their audio recorders or cameras pursuant to this policy.

Personnel are not required to obtain consent from an individual when:

- (a) In a public place,
- (b) In a location where there is no reasonable expectation of privacy and the officer is not conducting a criminal investigation.

#### **425.6.1 EXPLOSIVE DEVICE**

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

#### **425.6.2 MEMBER PRIVACY EXPECTATION**

All recordings made by members acting in their official capacity shall remain the property of the Department regardless of whether those recordings were made with department-issued or personally owned recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

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#### **425.7 REQUIRED ACTIVATION**

At no time should an officer jeopardize his/her safety in order to activate a recording device or change the recording media. If an officer's safety is in jeopardy, he/she shall activate their recording device as soon as practicable after the officer safety issue has been addressed. Officers shall activate their DAR or BWC and record contacts under the following circumstances/situations:

- (a) All self-initiated contacts. Whenever possible, audio or video recording devices shall be activated prior to any self-initiated activity or field contact. All other assisting officers shall also activate their audio or video recording devices prior to or upon arriving to the scene of the incident.
- (b) When responding to any in-progress incident. Whenever possible, DAR or BWC devices shall be activated prior to arrival at any in-progress incident. All other assisting officers shall also activate their DAR or BWC devices prior to arrival at any in-progress incident.
- (c) Any call for service or field contact where the officer reasonably believes the contact may become adversarial (e.g. domestic disturbances, contacts with mentally ill subjects, etc) or where the contact becomes adversarial after an officer's initial contact.
- (d) When investigating an incident where a reportable use of force occurred, all witness statements shall be recorded utilizing a DAR or BWC.
- (e) When executing a search warrant or conducting a parole or probation search, officers shall record the "Knock and Notice" with their DAR or BWC. Officers shall record any conversation with the occupants of the premises regarding the entry, the reason for the search, or the scope of the search. The recording(s) shall be uploaded to the Department's DEMS or the PUMA Management System and documented in the associated police report.
- (f) Canine handlers shall record the audible warning of a canine deployment.
- (g) In circumstances where the officer reasonably believes the recorded footage may contain evidentiary value.

Members shall remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording shall be considered using this same criterion. Recording shall resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Other than at the conclusion of the contact or investigation, personnel may deactivate in places where there is a reasonable expectation of privacy or in circumstances where the audio recorder or camera may prevent them from obtaining information in relation to an investigation. Instances where personnel may deactivate include, but are not limited to:

- (a) During interviews involving sexual assault victims,
- (b) In the presence of an explosive device,
- (c) Inside hospital emergency rooms and other medical facilities,

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- (d) In tactical planning situations;
- (e) While in a police facility.

### **425.8 POST-ACTIVATION PROCEDURES**

Any time an officer records a contact, which constitutes evidence in a criminal case, the officer shall cross-reference the associated case number on the recording and in the associated police report. In all cases of activation, the officer shall identify the appropriate category of retention.

When officers activate a recording device during the performance of their duties, the recording media shall be uploaded at the conclusion of their shift to the DEMS or the PUMA Management System.

### **425.9 RETENTION OF RECORDING MEDIA**

BWC and DAR recordings shall be retained in the DEMS or PUMA Management System where they are accessible for review and use strict to the guidelines pursuant to this policy. Access to recordings is automatically logged and can be audited. It should be clear that DEMS or the PUMA Management System will not allow for recordings to be manipulated or destroyed. Accidental recordings may be deleted at the request of the recording officer. Requests to delete accidental footage shall be approved by the Division Commander/Watch Commander after it has been proven that the recording does not contain any evidentiary value.

Recordings that contain evidentiary value shall be retained in the same manner as any other evidence gathered during a criminal investigation. Recordings that contain administrative or evidentiary value shall be retained for up to five years. These recordings include the following cases:

- (a) Involving reportable use of force
- (b) Leading to a detention or arrest
- (c) Administrative or criminal investigations

For all non-criminal recordings when it comes to DEMS, the retention of recording media will be 90 days provided that it remains unassociated to any criminal or administrative investigations.

For all non-criminal recordings when it comes to the PUMA Management System, the retention of recording media will be 90 days provided that it remains unassociated to any criminal or administrative investigations.

### **425.10 AUTHORIZED REVIEW AND USE OF RECORDED MEDIA FILES**

All recordings are the property of the Hayward Police Department and are not to be released outside the agency without prior written approval or court order or subpoena. Audio or video recordings shall only be reviewed or used for internal or external investigations of misconduct or where there is reasonable suspicion that a recording contains evidentiary value. Authorized groups may have access to review or use recorded media files on a right to know, need to know basis. The following groups include:

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- (a) By a supervisor or the Internal Affairs Unit in response to a personnel complaint, to investigate a violation of policy by an officer, to use for training purposes or to ensure proper use of the DAR or BWC per this policy. Manager and supervisors shall notify employees when a random compliance audit is completed. Internal Affairs investigations and personnel complaints do not constitute an audit.
- (b) By the personnel who originally recorded the incident. Members shall not use the fact that a recording was made as a reason to write a less detailed report. Employees may review only their own recordings, unless they have received prior permission from their division commander to review other available recordings, as it relates to:
  - Prior to preparing written reports and/or statements relevant to any incident to help ensure accuracy and consistency of accounts
  - Prior to courtroom testimony or for courtroom presentation
  - Officer-involved shootings
  - In-custody deaths
- (c) Pursuant to lawful process or by criminal investigators or court personnel authorized to review evidence in a related case or to aid in an investigation.
- (d) By media personnel with the written permission of the Chief of Police or authorized designee. Recordings that unreasonably violate a person's privacy or sense of dignity shall not be publicly released unless disclosure is required by law or order of the court.
- (e) By the City Attorney or his/her designee through permission by a Division Commander.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

In the absence of extenuating circumstances, an individual employee's recording shall not be viewed by another employee except via the share feature within Evidence.com and only after supervisor approval has been given.

#### **425.11 SYSTEM ADMINISTRATOR RESPONSIBILITIES**

The System Administrator is designated by the Chief of Police and has oversight responsibilities to include, but not limited to, the following:

- (a) Operation and user administration of the system
- (b) System evaluation
- (c) Training
- (d) Policy and procedure review and evaluation
- (e) Coordination with IT regarding system related issues
- (f) Ensure recorded files of evidentiary value are secured and maintained for a minimum of one year. Ensure all other routine files are secure and maintained for 90 days.
- (g) Ensure recorded files are reviewed and released in accordance with federal, state, and local statutes and the City of Hayward/Hayward Police Department retention policy.

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### **425.12 COORDINATOR**

The Chief of Police or the authorized designee shall appoint a member of the Department to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Designating persons responsible for downloading recorded data.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.

### **425.13 REVISIONS**

Enacted: December 17, 2007

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